

HOUSE BILL No. 2055

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-7-1-24; IC 12-7-2-197; IC 12-12-5-2; IC 35-46-1.

Synopsis: Tobacco vending machines. Prohibits the sale or distribution of tobacco products through vending and other coin machines. Provides that each violation is a Class A misdemeanor. (Current law provides that each violation is a Class C infraction.) Grants law enforcement officers the authority to seal, remove, impound, or disable a coin machine that is used to distribute or sell tobacco. Requires the department of state revenue to establish a program to compensate vending machine owners and purchase tobacco product vending machines. Makes conforming amendments.

Effective: Upon passage; July 1, 1999.

Hasler

January 27, 1999, read first time and referred to Committee on Public Policy, Ethics and Veterans Affairs.



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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 2055

A BILL FOR AN ACT to amend the Indiana Code concerning taxation and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 6-7-1-24 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1999]: Sec. 24. (a) Whenever the department
3 discovers any cigarettes which are subject to tax under this chapter and
4 upon which the tax has not been paid or the stamps affixed as required,
5 it may seize and take possession of the cigarettes together with any
6 ~~vending machine~~ or receptacle in which they are held for sale. The
7 seized cigarettes ~~vending machine~~, or receptacle, not including money
8 contained in the ~~vending machine~~ or receptacle, shall be forfeited to the
9 state. The department may, within a reasonable time after the seizure:
10 (1) sell the forfeited cigarettes and ~~vending machines~~ or
11 receptacles at public auction, but the department shall require the
12 purchaser to affix the proper amount of the stamps to the
13 cigarettes upon delivery to the purchaser;
14 (2) permit the person from whom the cigarettes were seized to
15 redeem the cigarettes and any ~~vending machine~~ or receptacle
16 seized therewith by the payment of the tax due together with a
17 penalty of fifty percent (50%) and the costs incurred in the

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proceeding; or

(3) destroy the confiscated cigarettes and ~~vending machine or~~
receptacle.

(b) The confiscation, destruction, sale, or redemption of cigarettes does not relieve any person of criminal penalties imposed for violation of this chapter.

(c) Any person who sells or holds for sale any packages of cigarettes not bearing Indiana tax stamps commits a Class A misdemeanor. This subsection does not apply to distributors or to employees of the department who are performing their official duties.

(d) The possession of more than one thousand five hundred (1,500) cigarettes in packages not bearing Indiana tax stamps by any person other than a distributor, a common carrier, or an employee of the state or federal government performing his official duties in the enforcement of this chapter constitutes prima facie evidence that the cigarettes are possessed for the purpose of sale.

(e) A person who knowingly possesses more than twelve thousand (12,000) cigarettes not bearing Indiana tax stamps and who has previously been convicted of a misdemeanor for possession or sale of unstamped cigarettes commits a Class D felony.

SECTION 2. IC 12-7-2-197 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 197. "Vending facilities", for purposes of IC 12-12-5, means automatic vending machines and snack bars and the auxiliary equipment necessary for the sale of newspapers, periodicals, confections, ~~tobacco products~~, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws.

SECTION 3. IC 12-12-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) Vending facilities shall be established for the purpose of selling newspapers, periodicals, confections, ~~tobacco products~~, food, beverages, and other articles approved for sale by the bureau and the custodial authority of the building.

(b) The location and type of vending facility shall be determined by the bureau in cooperation with the custodial authority of the building in which the vending facility will be operated.

SECTION 4. IC 35-46-1-11.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11.5. (a) ~~This section does not apply to a coin machine that is located in the following:~~

(1) ~~That part of a licensed premises (as defined in IC 7-1-1-3-20) where entry is limited to persons who are at least eighteen (18)~~



years of age.

(2) Private industrial or office locations that are customarily accessible only to persons who are at least eighteen (18) years of age.

(3) Private clubs if the membership is limited to persons who are at least eighteen (18) years of age.

(4) A location where the vending machine can be operated only by:

(A) the owner; or

(B) an employee;

who is at least eighteen (18) years of age. The vending machine may be operated directly or through a remote control device if the device is inaccessible to all customers.

(b) As used in this section, "coin machine" has the meaning set forth in IC 35-43-5-1.

(c) A person may not:

(1) distribute or sell tobacco by use of a coin machine; or

(2) install or maintain a coin machine that is intended to be used for the sale or distribution of tobacco.

(d) A person who knowingly or intentionally violates this section commits a Class C misdemeanor.

(e) A coin machine operated in violation of this section may be sealed, removed, impounded, or disabled by a law enforcement officer having jurisdiction in the county where the violation occurs.

SECTION 5. IC 35-46-1-11 IS REPEALED [EFFECTIVE JULY 1, 1999].

SECTION 6. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "department" refers to the department of state revenue.

(b) As used in this SECTION, "vending machine" means a coin machine, as defined under IC 35-43-5-1(c), that dispenses tobacco products.

(c) The department shall establish a program to compensate vending machine owners and purchase, except for spiral glass front vending machines, vending machines that:

(1) were operational in Indiana during 1998 at a location listed under IC 35-46-1-11.5(a)(1) through IC 35-46-1-11.5(a)(4) (before amended by this act); and

(2) are operational when sold to the department;

at a price that is calculated by the department under subsection (d).

(d) The department shall pay compensation under subsection (c)



to a vending machine owner equal to the amount determined under the following STEPS:

STEP ONE: Determine the difference between:

(A) the gross income (as defined in IC 6-2.1-1-2) of the vending machine owner that is derived from the sale of tobacco products from the vending machine; minus

(B) the state sales tax, cigarette tax, and tobacco products tax remitted by the vending machine owner in 1998 for the sale of tobacco products from a vending machine.

STEP TWO: Multiply the result determined under STEP ONE by two and five-tenths (2.5).

(e) Money from the state general fund shall be appropriated to the department to pay for the purchase of vending machines under subsection (c).

(f) The department may resell any vending machine purchased under this SECTION. The department may retain five percent (5%) of any money collected from the resale of vending machines to cover the costs associated with the purchase and resale of the vending machines, the remainder collected shall be deposited in the state general fund.

(g) An owner of a vending machine that desires to be compensated for a vending machine by the department under the program established under subsection (c) must:

(1) submit a claim for the vending machine to the department before December 1, 1999;

(2) supply the department with verification information specified by the department, which may include state tax records and company sales records; and

(3) transfer legal ownership of the vending machine, except for a spiral glass front vending machine, to the department.

A person who submits a fraudulent claim under this subsection commits a Class A infraction.

(h) This SECTION expires January 1, 2000.

SECTION 7. An emergency is declared for this act.

